

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**IN RE: YASMIN AND YAZ
(DROSPIRENONE) MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION**

)
) **3:09-md-02100-DRH-PMF**
)
) **MDL No. 2100**
)

This Document Relates to:

Jennifer Adams v. No. 3:12-cv-10114-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Jessica and Cheyenne Allen v. No. 3:11-cv-13141-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Kim Allen v. No. 3:12-cv-10251-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Brittany Bagnall v. No. 3:11-cv-13557-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Julie Baker v. No. 3:11-cv-13569-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Christina Berninger v. No. 3:12-cv-10064-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Emily Berry v. No. 3:12-cv-10118-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Courtney Bigel v. No. 3:11-cv-13405-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Rebecca Boren v. Bayer Corp., et al. No. 3:11-cv-13604-DRH-PMF

Tara and Michael Burns v. No. 3:12-cv-10065-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

Katherine Campbell v. No. 3:12-cv-10161-DRH-PMF
Bayer HealthCare Pharmaceuticals, Inc., et al.

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| <i>Jillian Carpenter v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10269-DRH-PMF |
| <i>Laquita Coates v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10144-DRH-PMF |
| <i>Deborah Cobb v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10090-DRH-PMF |
| <i>Nicole Daigle v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13466-DRH-PMF |
| <i>Shelley Darby v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13302-DRH-PMF |
| <i>Christina DiPierro v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10062-DRH-PMF |
| <i>Jennifer Dombrowski v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13556-DRH-PMF |
| <i>Christine Dorries v. Bayer Corp., et al.</i> | No. 3:11-cv-12629-DRH-PMF |
| <i>Tunisia Fitch v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10038-DRH-PMF |
| <i>Ana Gadsby v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13562-DRH-PMF |
| <i>Anissa Gallifent v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10155-DRH-PMF |
| <i>Kimberly and John Hasenberg v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13305-DRH-PMF |
| <i>Elizabeth Howard v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13576-DRH-PMF |
| <i>Monisce James v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10182-DRH-PMF |
| <i>Jolene Jaquez v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13422-DRH-PMF |

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| <i>Cheryl Kan v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13419-DRH-PMF |
| <i>Rebecca Kinsey v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13463-DRH-PMF |
| <i>Karen Kirk v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10115-DRH-PMF |
| <i>Melissa Laws v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13464-DRH-PMF |
| <i>Amber Melvin v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13312-DRH-PMF |
| <i>Amanda Montgomery v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13577-DRH-PMF |
| <i>Nicole Padilla v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13467-DRH-PMF |
| <i>Deshinae Petetant v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13432-DRH-PMF |
| <i>Sonya and Martin Porges v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13303-DRH-PMF |
| <i>Caurie Putnam v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10117-DRH-PMF |
| <i>Carole Reed v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13496-DRH-PMF |
| <i>Laura Rencher v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:11-cv-13613-DRH-PMF |
| <i>Chantelle Sawyer v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10036-DRH-PMF |
| <i>Lisa Shortridge v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10043-DRH-PMF |
| <i>Ashley Trejo v. Bayer HealthCare Pharmaceuticals, Inc., et al.</i> | No. 3:12-cv-10057-DRH-PMF |

Debra Ward v.
Bayer HealthCare Pharmaceuticals, Inc., et al.

No. 3:12-cv-10041-DRH-PMF

Chiquita Warren v.
Bayer HealthCare Pharmaceuticals, Inc., et al.

No. 3:11-cv-13306-DRH-PMF

Whitney Wauters v.
Bayer HealthCare Pharmaceuticals, Inc., et al.

No. 3:11-cv-13618-DRH-PMF

Kate Wilson v.
Bayer HealthCare Pharmaceuticals, Inc., et al.

No. 3:11-cv-13313-DRH-PMF

ORDER OF DISMISSAL WITHOUT PREJUDICE
(Failure To Comply With PFS Obligations)

HERNDON, Chief Judge

This matter is before the Court on the Bayer defendants' motion, pursuant to Case Management Order 12 ("CMO 12")¹ for an order of dismissal, without prejudice, of the plaintiffs' claims in the above captioned cases for failure to comply with Plaintiff Fact Sheet ("PFS") obligations.

Under Section C of CMO 12, each plaintiff is required to serve defendants with a completed PFS, including a signed declaration, executed record release authorizations, and copies of all documents subject to the requests for production contained in the PFS which are in the possession of plaintiff. Section B of CMO 12 further provides that a completed PFS is due "45 days from the date of service of the first answer to her Complaint or the docketing of her case in this MDL, or 45 days from the date of this Order, whichever is later."

¹ The Parties negotiated and agreed to CMO 12, which expressly provides that the discovery required of plaintiffs is not objectionable. CMO 12 § A(2).

Accordingly, Plaintiffs in the above-captioned matters were to have served completed PFSs on or before June 22, 2012. (See *e.g.*, *Adams* No. 3:12-cv-10114-DRH-PMF Doc. 6-1).² Per Section E of CMO 12, Notice of Overdue Discovery was sent on or before July 17, 2012. (See *e.g.*, *Adams* No. 3:12-cv-10114-DRH-PMF Doc. 6-2).³ As of the filing of Bayer's motion to dismiss, Bayer still had not received completed PFS materials from the plaintiffs in the above-captioned matters. As of the filing of this order, the above captioned plaintiffs PFS materials are more than three months overdue.

Under Section E of CMO 12, the **plaintiffs were given 14 days from the date of Bayer's motion**, in this case 14 days from September 25, 2012, to file a response either certifying that they served upon defendants and defendants received a completed PFS, and attaching appropriate documentation of receipt or an opposition to defendant's motion.⁴

² Identical motions were filed in each of the above captioned cases. For ease of reference the Court refers to the motion and exhibits filed in *Adams* No. 3:12-cv-10114-DRH-PMF Docs. 6, 6.1, 6.2).

³ A similar case specific notice of over-due discovery was sent to each of the subject plaintiffs and is attached as an exhibit to Bayer's motion to dismiss in each of the above captioned member actions.

⁴ Responses to Bayer's motion to dismiss were due 14 days from September 25, 2012 regardless of any response date automatically generated by CM/ECF. The Court has previously noted in orders in this MDL and during a status conference in this MDL that **when deadlines provided by CM/ECF conflict with orders of this Court, the Court ordered deadline will always control. See United States District Court for the Southern District of Illinois, Electronic Filing Rules, Rule 3 (The "filer is responsible for calculating the response time under the federal and/or local rules. The date generated by CM/ECF is a guideline only, and, if the Court has ordered the response to be filed on a date certain, the Court's order governs the response deadline.")**. The deadlines provided by CM/ECF are generated automatically based on the generic responsive pleading

To date, none of the plaintiffs in the above captioned member actions has filed a response. Because the plaintiffs have failed to respond to Bayer's allegations, the Court finds that these plaintiffs have failed to comply with their PFS obligations under CMO 12. **Accordingly, the claims of the above captioned plaintiffs are hereby dismissed without prejudice.**

The Court reminds plaintiffs that, pursuant to CMO 12 Section E, **unless plaintiffs serve the defendants with a COMPLETED PFS or move to vacate the dismissal without prejudice within 60 days after entry of this Order, the Order will be converted to a Dismissal With Prejudice upon defendants' motion.**

So Ordered:

 Digitally signed by
David R. Herndon
Date: 2012.11.02
10:13:39 -05'00'

**Chief Judge
United States District Court**

Date: November 2, 2012

times allowed under the rules and do not consider special circumstances (such as court orders specific to a particular case or issue).